

# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

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In Reply To:  
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March 31, 2004

EMAIL TRANSMISSION – 3/31/04

Instruction Memorandum No. MT-2004-052

Expires: 9/30/05

To: All Montana/Dakotas Employees

From: State Director

Subject: Policy on Equal Opportunity and Zero Tolerance of Discrimination

It is our responsibility to prevent harassment in the workplace, in all its various forms, and ensure a discrimination-free work environment for everyone. It is the policy of BLM to ensure that any type of discrimination or harassment is unacceptable.

Harassment, including but not limited to sexual harassment, has serious and negative consequences. This type of behavior affects morale, motivation, and job performance. It may result in increased absenteeism, turnover, and loss of productivity. Discriminatory harassment is a serious matter affecting the work life and sometime the personal life of individuals and others around them. Harassment *cannot and will not* be tolerated.

I want to emphasize that the BLM has a *Zero Tolerance* policy regarding unlawful harassment and other forms of discrimination based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, or reprisal. **Managers and supervisors** must exhibit and encourage appropriate standards of conduct as well as take immediate and appropriate corrective action when incidents are brought to their attention. **Employees** must take responsibility for their work environment and conduct themselves in a professional manner. Ask yourself, “What could be the impact of my behavior?”

I urge you to read the attached policy carefully. You must be aware of and understand your responsibility in providing and maintaining a harassment-free work environment. Each of you is responsible for understanding this policy. *Ignorance* of the law is no defense for unlawful conduct.

If you are experiencing, or believe you are experiencing, discriminatory harassment, immediately contact a supervisor, manager or EEO official. The Department established a Sexual Harassment Hotline which can be reached at 1-800-208-0328 or [Sexual Harassment Hotline@ios.doi.gov](mailto:SexualHarassmentHotline@ios.doi.gov). The hotline is available to receive reports of sexual harassment 24 hours a day.

If you have questions concerning this information, contact your supervisor, manager, or Sara Romero-Minkoff, EEO Manager, at 406-896-5180.

Signed by: Martin C. Ott, State Director

3 Attachments

1-Policy (1 p)

2-Procedures for Processing Individual Complaints of Discrimination (2 pp)

3-EEO staff (1 p)

# Zero Tolerance Policy

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Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination based on race, color, religion, sex (whether or not of a sexual nature), national origin, or reprisal. The Age Discrimination in Employment Act prohibits age discrimination, and the Rehabilitation Act prohibits discrimination of a person with a disability/handicap. Executive Orders prohibit discrimination based on sexual orientation, parental status, and genetic disposition.

The Equal Employment Opportunity Commission (EEOC) has always taken the position that the same basic standards apply to all types of prohibited harassment.

It is the policy of the BLM to provide equal opportunity in employment and advancement of all people without regard to race, color, religion, sex, national origin, age or disability. In addition, any employee who participates in the discrimination complaint process can be assured that he/she will be free of any reprisal.

Sexual harassment is a form of discrimination based on sex and will not be tolerated in the workplace. Sexual harassment is defined as deliberate or repeated behavior of a sexual nature which is unwelcome. Unlawful harassment is inappropriate, offensive, and illegal. Further, management will ensure that employees are free from reprisal or retaliation for having filed a harassment charge; expressed opposition to any discriminatory practice; or have testified, assisted, or participated in any manner in an Equal Employment Opportunity (EEO) complaint.

Further, it is the BLM's policy to have **Zero Tolerance** for unlawful discriminatory harassment. Any employee found to have violated the BLM's zero tolerance policy shall be subject to letters of reprimand, suspensions, or other appropriate disciplinary actions up to and including dismissal.

Recently the U.S. Supreme Court made clear that employers are subject to vicarious liability for unlawful harassment by supervisors. The ruling of the Supreme Court regarding vicarious liability applies to harassment by supervisors based on one of the protected categories.

An employer may be held liable for harassment between co-workers if an agent of the employer (i.e., supervisors and managers) knew or should have known of the misconduct, unless the employer can show that he/she took immediate and appropriate corrective action. The same is true in the case of non-employees, but the employer's control over such individuals' misconduct has to be considered.

An individual qualifies as an employee's **supervisor** if (a) the individual has authority to undertake or recommend tangible employment decisions affecting the employee, or (b) the individual has authority to direct the employees daily work activities.

Individuals who believe they are being harassed should take advantage of BLM's preventative or corrective opportunities, or otherwise avoid harm. Examples of how to do this are: (1) Identify and communicate the unwelcome behavior to the harasser and ask the person to stop; and/or (2) tell a manager or supervisor about the specific incident(s); and/or (3) contact the EEO Manager or a Counselor named on the attached list.

If you have reason to believe you have been subjected to a discriminatory practice, including harassment, which adversely affects your employment opportunities, you must report it within 45 calendar days to your supervisor or an EEO official. Procedures for processing individual complaints of discrimination are attached.

**PROCEDURES FOR PROCESSING INDIVIDUAL  
COMPLAINTS OF DISCRIMINATION  
BASED ON RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE\*,  
PHYSICAL OR MENTAL DISABILITY, OR REPRISAL**

1. Employee or applicant for employment contacts EEO Manager or EEO Counselor within 45 calendar days of the alleged discriminatory event or personnel action. The Counselor will do an inquiry and attempt informal resolution.
2. Ordinarily, counseling must be completed within 30 calendar days unless both parties agree to an extension of not more than 60 calendar days. In cases where an aggrieved individual agrees to participate in Alternative Dispute Resolution (ADR) procedures available as part of the agency's counseling function, the counseling period will be 90 calendar days of the end of the ADR process, whichever is earlier.
3. If the matter has not been informally resolved, the aggrieved individual shall be informed in writing at the conclusion of the counseling period of the right to file a discrimination complaint.
4. A formal complaint must be filed within 15 calendar days of receipt of the "Notice of Final Interview and right to file a formal complaint."
5. The Agency is required to conduct a complete investigation of the complaint within 180 calendar days of the filing of the complaint, unless the parties agree in writing to extend the period.
6. Complainant is provided a copy of the investigative report and advised that within 30 calendar days of receipt of the report, he or she has the right to request either a hearing before an Administrative Judge (AJ) or final agency decision.
7. Complainants who want to request a hearing will send their requests directly to the Equal Employment Opportunity Commission (EEOC) Office. Complainants must notify the agency at the same time they make the hearing request to EEOC. Requests for hearings must be in writing.
8. If the complainant requests a hearing, the EEOC shall appoint an AJ to conduct a hearing. Upon appointment to a case, the AJ assumes full responsibility for the complaint. The AJ will review the complaint file, preside over discovery or other fact-finding, holding a hearing and issue a decision. The hearing shall be recorded and transcribed verbatim.
9. The AJ has authority to dismiss all of a complaint for all of the reasons contained in the dismissal provisions and no longer will send complaints back to the agency for dismissal.
10. The AJ will issue a decision to both parties. The agency will have 40 days to issue a final order on the complaint. The final order will notify the complaint whether or not the agency will fully implement the decision of the AJ and will contain notice of the complainant's civil action and appeal rights. If the agency's final order does not fully implement the AJ's decision, the agency must simultaneously file an appeal with EEOC.
11. The 180-day timeframe for the AJ to issue decisions on cases referred to them for hearings will run from the AJ's receipt of the complaint file from the agency.

12. The AJ will send the hearing record to the parties, with the decision. The final decision and the record does not have to be sent certified mail.

NOTE: The complainant has the right to file a civil action in an appropriate U.S. District Court:

within 90 calendar days of receipt of the agency's final order on his/or her complaint if no appeal has been filed.

after 180 calendar days from the date of filing an individual complaint with the agency if there has been no decision.

within 90 calendar days of his or her receipt of notice of final action taken by the EEOC on appeal.

after 180 calendar days from date of filing an appeal with EEOC if no decision has been issued by the Commission.

Filing of a civil action terminates processing of an individual complaint by the agency or EEOC.

\*The Age Discrimination in Employment Act of 1967 provides that an employee or applicant for employment (age 40 or over) may bypass the administrative complaint process and file a civil action concerning allegations of age discrimination directly in the U.S. District Court provided that the aggrieved person first provides EEOC with a written notice of intent to sue under the ADEA. The notice must be filed within 180 calendar days of the date of the alleged discriminatory action. Once a timely notice of intent to sue is filed with EEOC, the aggrieved person must wait at least 30 calendar days before filing a civil action. Notices of intent to sue must be submitted to:

Equal Employment Opportunity Commission  
Office of Federal Operations Federal Sector Programs  
P.O. Box 19848  
Washington, DC 20036

**Authorities:** Title VII of the Civil Rights Act of 1964 as Amended; CFR 1614; Age Discrimination in Employment Act; Rehabilitation Act; and Executive Orders 13087, 13145 and 13152.

## Montana/Dakotas Equal Employment Opportunity Staff

<b>EEO MANAGER</b>		
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<b>COUNSELORS/MEDIATORS</b>		
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